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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,307	03/30/2007	Byron Scott Bailey SR.	TS/4-22995/CGC 2176/PCT	4972

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JoAnn Villamizar
Ciba Corporation/Patent Department
540 White Plains Road
P.O. Box 2005
Tarrytown, NY 10591

EXAMINER	
HAMMER, KATIE L	

ART UNIT	PAPER NUMBER
1796	

NOTIFICATION DATE	DELIVERY MODE
06/09/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

andrea.dececchis@ciba.com
deborah.pinori@ciba.com
sonny.nkansa@basf.com

Office Action Summary	Application No.	Applicant(s)	
	10/582,307	BAILEY ET AL.	
	Examiner	Art Unit	
	KATIE HAMMER	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 August 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *8/22/2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 1-17 are pending in this application.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the compositions comprising 75-95% by weight of A and 5-25% by weight of B where the total amount of A and B is 100% by weight. Although the term "comprising" can be understood as if other compounds than A and B can be present in the composition, the total amount of A and B means that only A and B are present in the composition. Moreover, none of the examples describes such compositions containing exclusively A and B, and the amounts of A and B used in the examples do not fall within the scope of present claims 1-6 which leads to a lack of support for claims 1-6.

In claim 4, line 1, the "containing component (A) the ethanolamine…" is unclear, should be --containing component (A) **wherein X in formula (1) is** the ethanolamine-- because as written, it is unclear as to the claimed subject matter.

In claim 7, lines 2 and 5, states compositions according to claim 1 which additionally contain 0.1-10% by weight of C and the total amount of A, B, and C being 100% by weight. Therefore, there is an inconsistency between claims 1 and 7, as the total amount of A and B in claim 1 and the total amount of A, B, and C in claim 7 cannot

both equal 100% by weight. The examples also teach other compounds besides A, B, and C in the composition, further rendering the claims indefinite.

Therefore, it is not clear what are the components of the claimed compositions and in which amounts they are used, resulting in a lack of clarity in present claims 1-17. As it is not clear which amounts of A and B should be present in the claimed compositions, any document disclosing compositions comprising A and B (regardless of the percent weight) will be used in the rejection that follows.

Claim Rejections - 35 USC § 103

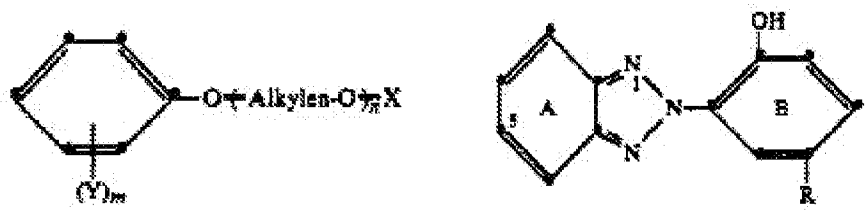
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-17, are rejected under 35 U.S.C. 103(a) as being unpatentable over Jollenbeck et al. (US 5,009,669).

As to claims 1-9 and 11-15, Jollenbeck et al. (US '669) teaches a composition comprising (A) the compound of formula (1) wherein R_1 is C_1-C_{12} alkyl, aryl, or aralkyl and R_2, R_3, and R_4 are hydrogen, n is a number from 4 to 50, and X is the acid radical or an inorganic oxygen containing acid (see col. 1, lines 27-41 and the structure of formula (2) shown below left where Y is C_1-C_{12} alkyl, aryl, or aralkyl and X is acid radical or an inorganic oxygen containing acid) and compound (B), formaldehyde condensation products from aromatic sulfonic acids and formaldehyde (see col. 9, lines 58-61); a

composition containing as component (A) a compound of the formula (1), wherein R_1 is 1-phenylethyl, R_2, R_3, and R_4 are hydrogen, Y represents ethylene, and n is a number from 12 to 30 (see col. 1, lines 27-41 and col. 2, lines 3-11); wherein the acid radical X is the ethanolamine, diethanolamine, triethanolamine, ammonium, or potassium (see col. 2, lines 43-52); as component (B) a condensation product of formaldehyde with sulfonated ditolyl ether (see col. 6, lines 36-43); polyadducts of 2 to 80 moles of alkylene oxide with unsaturated or saturated monoalcohols, fatty acids, fatty amines or fatty amides of 8 to 22 carbon atoms (see col. 5, lines 38-44); a composition where component (C) is a polyadduct of 20 to 30 moles of ethylene oxide with 1 mole of stearyl alcohol (polyadducts of 2 to 80 moles ethylene oxide replaced by higher saturated monoalcohols, see col. 5, lines 38-44); an aqueous dispersion containing 5-40% by weight of a benzotriazole UV absorber and the composition according to claim 1 (see col. 1, lines 10-41 and the structure of formula (1) shown below); a UV absorber that is the benzotriazole compound of formula (2) where R_1 is halogen and R_2 and R_3 are hydrogen (structure of formula (1) shown below right where R is halogen, see col. 1, lines 13-26); a UV absorber that is the benzotriazole compound of formula (2a) (structure of formula (1) shown below right where R is C_1-alkyl, and B is further substituted by a lower alkyl, the $C(CH_3)_3$, see col. 1, lines 13-26); an aqueous dispersion containing 1-10% by weight of a stabilizing or thickening agent (see col. 4, lines 37-45); dispersion containing a heteropolysaccharide formed from the monosaccharides glucose and mannose and glucuronic acid as thickening agent (see col. 5, lines 5-15).



As to claims 16-17, Jollenbeck et al. (US '669) also teaches a process for dyeing textile material which comprises dyeing this material in the presence of an aqueous dispersion (see col. 8, lines 3-10); and a method for reducing the differential pressure in the static dyeing process by using disperse dyes and an aqueous dispersion (see column 8, lines 11-15).

Regarding claim 17, Jollenbeck et al. does not disclose that the method of using the disperse dye and aqueous dispersion is used for reducing the differential pressure in the static dyeing process. However, this limitation is a statement of intended use. In regards to statements of intended use, MPEP 2111.02 states:

> During examination, statements in the preamble reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the recited purpose or intended use results in a structural difference (or, in the case of process claims, manipulative difference) between the claimed invention and the prior art. If so, the recitation serves to limit the claim. [MPEP 2111.02 (Citing In re Otto, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963)]

In the present case, no structural difference can be discerned between the prior art and the instant invention.

Regarding claim 10, a *prima* facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium Metals Corp. of America* v. *Banner,* 778F.2d 775,227 USPQ 773 (Fed. Cir. 1985). See MPEP

2144.051. Applicant has not provided evidence for the criticality of their composition percentage weights as compared to the composition taught in Jollenbeck et al. that can also be used for dyeing textile materials. Therefore, and in conjunction with the U.S.C. 112 rejection issues stated above, the claimed composition would have been obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATIE HAMMER whose telephone number is (571)270-7342. The examiner can normally be reached on Monday to Friday, 10:00am EST to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harold Y Pyon/
Supervisory Patent Examiner, Art Unit 1796

/KLH/